

REMARKS

Applicant thanks the Examiner for acknowledging Applicant's claim to foreign priority under 35 U.S.C. § 119(a)-(d), and for confirming that the certified copy of the priority document has been received at the Patent Office.

Allowable Subject Matter:

Applicant thanks the Examiner for indicating that claim 21 is allowable, and that although claims 8 and 11 are objected to, these claims would be allowable if written in independent form.

Applicant has added claims 26 and 27 which are merely claims 8 and 11 written in independent form, and has amended claims 2-3, 5-8 and 12-18 to depend on allowed claim 21. Therefore, these claims are also now in allowable form.

Examiner's Comments:

With respect to the Examiner's comments on page 2 of the above referenced Office Action referring to Applicant's arguments, Applicant notes that the arguments to which the Examiner is referring to apply to claim 22, and not claim 4 as asserted by the Examiner.

Claim Rejections:

Claims 1-23 are all the claims that have been examined in the application, and currently claims 1-7, 9-10, 12-20 and 22-23 stand rejected. Claims 1, 19 and 20 have been cancelled without prejudice or disclaimer.

35 U.S.C. § 102(e) Rejection - Claims 1, 3-7, 10, 14, 19, 20, 22 and 23:

Claims 1, 3-7, 10, 14, 19, 20, 22 and 23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the previously applied Vembu reference. Because of the amendments discussed

above, and shown in the attached Appendix the above referenced rejection will only be discussed with respect to claims 22 and 23. As to these claims, Applicant respectfully disagrees.

As discussed in Applicant's previous amendments and responses, the Vembu system uses the measured or detected signal-to-noise ratio (SNR) determine which control mode is to be triggered, either a burst or tracking mode. When the SNR is at the proper level, nothing is done, when the SNR is high the signal is adjusted down, and when the SNR is low the control algorithm determines if a quick burst of signal is needed (burst mode) or a gradual increase is needed (tracking mode). However, what is important to note in all of the above scenarios is that the SNR value used is the actual measured or detected SNR value. Neither the SNR value, nor the threshold value are estimated in the Vembu system. Thus, the system disclosed in Vembu, and the system of the present invention have significant differences in their operation.

As an initial matter, Applicant has not found, nor has the Examiner identified any point in Vembu where an "estimation" is performed. In attempting to satisfy this feature, of the present invention, the Examiner has stated that the claim language "regularly estimating if a criterion is met" is disclosed because Vembu determines when the "received signal-to-noise ratio is below a nominal level." *See* Office Action dated March 12, 2002, page 3, para. 3 (emphasis added). The Examiner has also stated that this claim language is satisfied because in Vembu, "[t]he criterion is met if the SNR is greater than a desired nominal value." *See* Office Action dated July 16, 2001, page 9, para. 9 (emphasis added). However, as the Examiner's language makes clear Vembu only uses an actual determination of the SNR compared to a threshold value to determine whether or not to use the tracking mode, burst mode, or no mode at all. As the Examiner has

admitted, Vembu controls the modes based on whether or not the SNR “is greater” than or “is below” a certain threshold value. There is no estimation disclosed in Vembu in the performance of either of these steps. Applicant submits that the determination of a SNR value greater than or lower than a threshold value is not an “estimation.” Vembu does not disclose “estimating whether or not the SNR is greater than or lower than a value, Vembu determines whether or not the SNR “is” greater than or less than a threshold value. Applicant submits that these are not the same.

In fact, this is a distinction recognized by the Federal Circuit. In *Phonometrics, Inc. v. Siemens Information Systems, Inc.*¹ the Federal Circuit considered whether or not the claim language “call completion signal,” identified in the claim as “generated in the telephone system when a called party answers at a called telephone,” contemplates or covers a device which uses “timing protocols to approximate when [a] called party answers a call.” *See Phonometrics*, at *5-*6. In its decision, the Court found that a “call completion signal,” in the patent at issue, was created “when [a] called party is reached” and, as such, “a device which uses a timing protocol to approximate the inception of telephone calls does not satisfy the requirement of the claim that the apparatus be activated by a ‘call completion signal.’” *Id.* at *6. The Court further stated that the patent identified the “call completion signal” as occurring “when” the called party picks up the phone, and not “approximately when” the called party picks up the phone, and that “signals generated by timing protocols, which only estimate when calls are answered, [] do not constitute ‘call completion signals.’” *See id.* (emphasis added). Thus, the Federal Circuit recognizes that

¹ 1998 U.S. App. LEXIS 944 (Fed. Cir. 1998) (attached for the Examiner’s reference).

there is a patentable distinction between an actual measured or detected event, and one that is “estimated” or approximated.

Therefore, it is the Applicant’s position that Vembu only discloses detecting or measuring the SNR and comparing it to a threshold value. No estimation takes place. As such, Applicant respectfully submits that Vembu fails to disclose, teach or suggest each and every feature of the present invention, as set forth in claims 22 and 23, and hereby requests the Examiner reconsider and withdraw the present 35 U.S.C. § 102(e) rejection of these claims. Further, as newly added claims 28-57 depend on these claims, either directly or indirectly, these claims are also allowable, at least by reason of their dependence.

However, additionally, each of these claims 22 and 23 have been amended as shown in the attached Appendix to clarify the distinction between the present invention, and the Vembu reference. With regard to claim 22, the claim recites that “de-activation includes performing a different type of algorithm than [the] power control algorithm”, and claim 23 recites “regularly estimating whether a criterion will or will not be met by the operation of [a] power control algorithm, and not performing any power control algorithm in accordance with a result of [the] estimating step.” Neither of these features are disclosed, taught or suggested by the Vembu reference and, therefore, again Vembu fails to teach or suggest each and every aspect of the claimed invention, as set forth in claims 22 and 23.

35 U.S.C. § 103(a) Rejection - Claim 2:

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vembu in view of Chen. In view of the amendment to claim 2, discussed previously, this rejection is now moot.

35 U.S.C. § 103(a) Rejection - Claims 9, 12, 13 and 15-18:

Claims 9, 12, 13 and 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vembu in view of Official Notice. Again, in view of the amendments discussed above, the rejection of these claims is now moot.

New Claims 24 and 25:

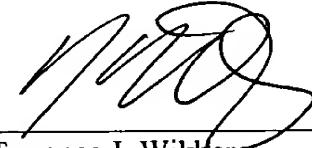
For at least the same reasons that claim 21 is allowable, Applicant submits that these claims are also allowable.

Conclusion:

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 19-4880.

Respectfully submitted,



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APPENDIX
VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claims 1, 19 and 20 are canceled.

The claims are amended as follows:

2. (Amended) A method according to claim ~~1~~21, wherein said de-activation includes performing said algorithm with a relatively higher repetition period.

3. (Amended) A method according to claim ~~1~~21, wherein said de-activation includes performing a different algorithm instead.

5. (Twice Amended) A method according to claim ~~1~~21, comprising:

- regularly estimating ~~(20 24, 26, 27, 30)~~ if a criterion is met as to whether said power control algorithm should better be de-activated, when activated, or activated, when de-activated,

- de-activating ~~(28)~~, or activating ~~(31)~~, said power control algorithm if the corresponding criterion is met.

6. (Twice Amended) A method according to claim ~~1~~21, wherein provision is made not to de-activate, or activate, said algorithm too frequently.

7. (Twice Amended) A method according to claim ~~4~~21, wherein said estimation as to whether said criterion is met is based on an estimation of a deviation value, representative of a deviation between an estimated transmission quality and a target transmission quality.

8. (Amended) A method according to claim 7, wherein said estimation as to whether said criterion is met includes:

- an estimation ~~(23)~~ of a first deviation value, which would have been obtained if said power control algorithm had always been activated, on a given time-interval on which said deviation value is estimated,
- an estimation ~~(24)~~ of a second deviation value, which would have been obtained if said power control algorithm had never been activated, on said given time-interval on which said deviation value is estimated,
- a choice ~~(25)~~ between activation and de-activation of said algorithm depending on which of said first and second deviation values is the lowest.

12. (Twice Amended) A method according to claim ~~4~~21, wherein said method is performed in the uplink transmission direction of said mobile radiocommunication system.

13. (Twice Amended) A method according to claim 421, wherein said method is performed in the downlink transmission direction of said mobile radiocommunication system.

14. (Amended) A method according to claim 421, wherein said mobile radiocommunication system is of CDMA type.

15. (Twice Amended) A mobile radiocommunication network entity-(40), comprising, for performing a method according to claim 421, in the uplink transmission direction of a mobile radiocommunication system:

- means (41)-for performing said method,
- means (42)-for sending corresponding power control commands (C1) to a mobile station-(43).

16. (Twice Amended) A mobile station-(43), comprising, for performing a method according claim 421, in the uplink transmission direction of a mobile radiocommunication system:

- means (44)-for receiving power control commands (C1)-from a mobile radiocommunication network entity-(40), according to said method.

17. (Twice Amended) A mobile station-(45), comprising, for performing a method according to claim 121, in the downlink transmission direction of a mobile radiocommunication system:

- means (46) for performing said method,
- means (47) for sending corresponding power control commands (C2) to a mobile radiocommunication network entity-(48).

18. (Twice Amended) A mobile radiocommunication network entity-(48), comprising, for performing a method according to claim 121, in the downlink transmission direction of a mobile radiocommunication system:

- means (49) for receiving power control commands (C2) from a mobile station, according to said method.

22. (Amended) A method for improving performances of a mobile radiocommunication system using a power control algorithm, said method comprising:
regularly estimating if a criterion is met as to whether said power control algorithm should better be de-activated; and
de-activating said power control algorithm if said criterion is met,
wherein said de-activation includes performing a different type of algorithm than said power control algorithm.

23. (Amended) A method for improving performances of a mobile radiocommunication system using a power control algorithm, said method comprising:
regularly estimating whether a criterion will or will not be met by the operation of said power control algorithm, and
~~de-activating~~ not performing any said power control algorithm in accordance with a result of said estimating step.

Claims 24-58 are added as new claims.